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May 3, 2017

United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
Attn: Magistrate Judge James Orenstein

Re: Todd C. Bank v. Pro Custom Solar LLC
Case 1:17-cv-00613-LDH-JO

Dear Judge Orenstein:

I am the plaintiff in the above-referenced matter, and hereby move, pursuant to Rule 37(a)(3)(A) of the Federal Rules of Civil Procedure, for an Order compelling Defendant, Pro Custom Solar LLC, doing business as Momentum Solar ("Momentum Solar"), to amend its disclosures pursuant to Rule 26(a)(1)(A)(i) (a copy of these disclosures is attached hereto as Exhibit "A"). On May 3, 2017, Thomas J. Cotton, on behalf of Momentum Solar, and I had a meet-and-confer telephone conference, during which we were unable to resolve the subject of this motion.

In addition to stating that "[a]ll parties to this case are likely to have discoverable information," Momentum Solar stated as follows in its disclosures pursuant to Rule 26(a)(1)(A)(i):

> The following individuals are likely to have discoverable information: Employees, officers, and/or directors of Defendant, whose identities will be supplied as soon as possible[;] Employees, officers, and/or directors of Home Solar Solutions[; and] Employees, officers, and/or directors of Advanced Energy Solutions

Id., p.2. Rule 26(a)(1)(A)(i) requires the disclosure of "the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment."

When I asked Mr. Cotton why no contact information was provided with respect to "Home Solar Solutions" and "Advanced Energy Solutions," he stated that the sole source of these names was a recording of the telephone call that gave rise to my claims in this action, *i.e.*, under the Telephone Consumer Protection Act, 47 U.S.C. Section 227, and New York General Business Law Section 399-p.

Because Mr. Cotton also stated that Momentum Solar does not know whether "Home Solar Solutions" and "Advanced Energy Solutions" are anything other than the names that were stated on the recording, I suggested that the proper description would have been, in sum and substance, as follows:

> The following individuals are likely to have discoverable information: Employees, officers, and/or directors of Defendant, whose identities will be supplied as soon as possible[;] Employees, officers, and/or directors of *a person or entity that identified itself as Home Solar Solutions*[; and] Employees, officers, and/or directors of *a person or entity that identified itself as Advanced Energy Solutions*

Mr. Cotton, although not disputing the accuracy of my suggested description, maintained that the substance of Momentum Solar's disclosure had already matched the substance of my suggested revision, explaining that the use of the names "Home Solar Solutions" and "Advanced Energy Solutions" without any corporate suffix (*i.e.*, Corp., LLC, etc.) made clear that they were trade names and also made clear that such trade names were all of the information that Momentum Solar had with respect to "Home Solar Solutions" and "Advanced Energy Solutions." However, not all states require that corporations have a corporate suffix. *See* Nev. Rev. Stat. § 78.035 (requiring only that a suffix be used in the case of "[a] name appearing to be that of a natural person and containing a given name or initials"); Cal. Corp. Code, § 202(a) (requiring a suffix only by statutory close corporations). Thus, the mere fact that "Home Solar Solutions" and "Advanced Energy Solutions" lack a corporate suffix does not necessarily mean that those names are trade names; rather, those names could be corporate names, in which case those names might or might not also be their trade names.

In sum, Momentum Solar's disclosure is inadequate and should accordingly be amended.

Sincerely,

s/ *Todd C. Bank*

Todd C. Bank

TCB/bd

Exhibit "A" to the Letter Motion of Todd C. Bank

Disclosures, Pursuant to Rule 26(a)(1)(A)(i) of the Federal Rules of Civil Procedure, by Defendant, Pro Custom Solar LLC, doing business as Momentum Solar

Thomas J. Cotton, Esq.
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Pro Custom Solar LLC d/b/a Momentum Solar

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

TODD C. BANK, individually and on behalf of all others similarly situated, Plaintiff, v. PRO CUSTOM SOLAR LLC d/b/a MOMENTUM SOLAR, Defendant.	CIVIL ACTION NO. 1:17-cv-00613-LDH-JO **INITIAL DISCLOSURES** ECF Case

Defendant Pro Custom Solar LLC d/b/a Momentum Solar ("Defendant"), by and through its counsel Schenck, Price, Smith & King, LLP, hereby states as follows with respect to the initial disclosures mandated by Rule 26(a):

Introductory Statement

These initial disclosures are made based upon the information reasonably available to Defendant as of the date of this disclosure. Defendant has not completed discovery in this matter and specifically reserves its right to supplement, amend, or correct these disclosures during the course of discovery and up until the time of trial.

Defendant specifically reserves all rights, privileges, and immunities from disclosure of material and information subject to the attorney-client privilege, the work-product doctrine, and all other applicable privileges or immunities. Any disclosure of privileged material or information herein, or the accompanying documents, is inadvertent and not intended as a waiver of any applicable right, privilege, or immunity.

The disclosure of information and material in connection herewith constitutes neither an admission that the information or material is admissible at trial, nor a waiver of any objection to the discovery or admissibility of the disclosed information or material at trial.

Rule 26(a)(1)(A)(i)

All parties to this case are likely to have discoverable information. In addition, the following individuals are likely to have discoverable information:

NAME	SUBJECT OF INFORMATION
Employees, officers, and/or directors of Defendant, whose identities will be supplied as soon as possible	Knowledge of the allegations set forth within plaintiff's complaint and the defenses to same, specifically the absence of any agency relationship between Defendant and the entity that initiated the subject calls
Employees, officers, and/or directors of Home Solar Solutions	Knowledge of the allegations set forth within plaintiff's complaint and the defenses to same, specifically the absence of any agency relationship between Defendant and the entities that initiated the subject calls
Employees, officers, and/or directors of Advanced Energy Solutions	Knowledge of the allegations set forth within plaintiff's complaint and the defenses to same, specifically the absence of any agency relationship between Defendant and the entities that initiated the subject calls

By way of further response, all individuals identified in depositions or documents exchanged during the course of discovery are likely to have discoverable information. Defendant reserves its right to amend this response as discovery continues to develop.

Rule 26(a)(1)(A)(ii)

Defendant may use any or all of the documents attached to or otherwise referenced in the pleadings. By way of further response, Defendant may use all documents discussed during depositions and all documents exchanged during the course of discovery. Defendant reserves its right to amend this response as discovery continues to develop.

Rule 26(a)(1)(A)(iii)

Not applicable to Defendant.

Rule 26(a)(1)(A)(iv)

Not applicable to Defendant. Defendant reserves its right to amend this response as discovery continues to develop.

Rule 26(a)(2)(A)

Defendant has not yet retained an expert. Defendant reserves its right to amend this response as discovery continues to develop.

Rule 26(a)(2)(B)

Defendant has not yet retained an expert, and thus has not yet received an expert report. Defendant reserves its right to amend this response as discovery continues to develop.

Dated: Florham Park, New Jersey
April 25, 2017

SCHENCK, PRICE, SMITH & KING, LLP

By: /s Thomas J. Cotton, Esq.
Thomas J. Cotton, Esq.

220 Park Avenue
P.O. Box 991
Florham Park, New Jersey 07932

Phone: (973) 539-1000

Attorneys for Defendant,
Pro Custom Solar LLC d/b/a Momentum Solar

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2017, a true and accurate copy of the foregoing is being filed electronically via the Court's electronic-filing (ECF) system. Notice of this filing will be sent to all parties by operation of the Court's ECF system and copies will be mailed to those parties, if any, who are not served via the Court's ECF system.

Dated: May 3, 2017

s/ *Todd C. Bank*
Todd C. Bank